

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

DAVID ALLEN CORNELL,  Petitioner,  vs.  K. BENNETT, WARDEN YANKTON FPC,  Respondent.	4:21-CV-04056-RAL  ORDER DENYING PETITIONER'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND DENYING PETITIONER'S MOTION FOR THE APPOINTMENT OF COUNSEL
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On April 7, 2021, David Allen Cornell, an inmate at the Yankton Federal Prison Camp in Yankton, South Dakota, filed a petition for writ of habeas corpus under 28 U.S.C. § 2241. Doc. 1 This Court ordered Cornell to pay the \$5 filing fee because he had not moved for leave to proceed in forma pauperis. Doc. 4. Now, Cornell moves for leave to proceed in forma pauperis and for the appointment of counsel. Docs. 5, 7.

Cornell reports average monthly deposits of \$373.40 and an average monthly balance of \$1,806.86 in his prisoner trust account. Doc. 6. Cornell has the wherewithal to pay the \$5 filing fee. Next, Cornell moves for the appointment of counsel. Doc. 7. “A pro se litigant has no statutory or constitutional right to have counsel appointed in a civil case.” Stevens v. Redwing, 146 F.3d 538, 546 (8th Cir. 1998). In determining whether to appoint counsel to a pro se litigant, the Court considers the complexity of the case, the ability of the litigant to investigate the facts, the existence of conflicting testimony, and the litigant’s ability to present his claims. Id. At this time, Cornell’s claims do not appear to be too complex, and he is able to investigate the facts and present his claims adequately.

Therefore, it is hereby

ORDERED that Cornell's motion for leave to proceed in forma pauperis, Doc. 5, is denied. Cornell must pay the **\$5 filing fee by May 27, 2021**. Failure to comply with this Court's order by the designated date will result in the dismissal of Cornell's petition for failure to prosecute. It is further

ORDERED that the Clerk of Court, upon receipt of the \$5 filing fee, arrange to serve a copy of all pleadings of record and this Order on Respondent. It is further

ORDERED that Respondent file an answer, and if he so chooses, a motion to dismiss and memorandum, within thirty days of service of the pleadings. It is finally

ORDERED that Cornell's motion for appointment of counsel, Doc. 7, is denied.

DATED April 27<sup>th</sup>, 2021.

BY THE COURT:



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ROBERTO A. LANGE  
CHIEF JUDGE